

Remarks

This Amendment is in response to the Office Action dated **April 17, 2008**. In the Office Action, the effective priority date was asserted to be 10/25/1999; the specification was objected to as failing to provide proper antecedent basis for the claimed subject matter; claims 29, 30, 55, 56, 59, 60, and 62-66 were rejected under 35 USC 112, first paragraph; and claims 29, 30, 55, 56, 59, 60, and 62-65 were rejected under 35 USC 103(a) as being unpatentable over White et al. (2001/0047200) in view of Khosravi et al (5,824,054).

The following comments are presented in the same order, with section headings, as the Office Action.

Specification

In the Office Action, the specification was objected to as failing to provide proper antecedent basis for the claimed subject matter, citing 37 CFR 1.75(d)(1) and MPEP §608.01(o).

To further prosecution, Applicants have amended the specification to provide antecedent basis for the claimed subject matter. Support for the specification as amended can be found at least in Figs. 9 and 10A-B of the application as filed. No new matter was added. Applicants have also amended Fig. 9 and have submitted a replacement sheet of drawings herewith in which reference numerals and a box outlining a quartet of stretchable elements, which were added in the amendment to the specification, have been added to Fig. 9. No new matter was added. Applicants request that the replacement Fig. 9 be entered.

Applicants request entry of the amendments to the specification and to Fig. 9 and request withdrawal of the objection.

35 USC 112

In the Office Action, claims 29, 30, 55, 56, 59, 60, and 62-66 were rejected under 35 USC 112, first paragraph as failing to comply with the written description requirement.

Specifically, the Office Action asserted:

In claims 29, 55, 59, the new limitation that the stent has wing-like elements comprising first and second longitudinal elements with at least three turns between the first end and the second end of each longitudinal element. According to the drawings, it

appears that the longitudinal elements only have three turns, thus the limitation of “at least” encompasses more than three of which was not disclosed. This is new matter.
(emphasis in original)

Applicants submit that the assertion made in the Office Action did not establish a *prima facie* case that the description requirement was not met because it did not provide any “reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed,” contrary to MPEP §2163.04 I. Furthermore, Applicants note that new matter is a separate issue from the written description requirement (MPEP 2163.06).

However, to further prosecution, Applicants have amended the claims to recite “three” instead of “at least three.” Applicants reserve the right to pursue the claims in a continuation application.

For at least this reason, Applicants request withdrawal of the 35 USC 112 rejection.

35 USC 103

In the Office Action, claims 29, 30, 55, 56, 59, 60, and 62-65 were rejected under 35 USC 103(a) as being unpatentable over White et al. (2001/0047200) in view of Khosravi et al (5,824,054).

Applicants have amended claims 29, 55, 59, and 64 and cancelled claims 65-66. Support for the amendments can be found on pg. 28, line 6 to pg. 29, line 8 and Figs. 9 and 10A-B of the application as filed. No new matter was added.

Applicants submit that White does not teach or suggest “a plurality of second cells, each second cell being defined by four longitudinal elements and two peripheral connector elements, each of the four longitudinal elements forming a portion of a different stretchable element, each second cell having a second area, the second area being greater than the first area when the stent is in the unstretched condition” as recited in independent claim 29.

Applicants submit that White does not teach or suggest “circumferentially adjacent stretchable cells being engaged by a peripheral connector element and longitudinally adjacent

stretchable cells being engaged at their looped ends thereby forming a plurality of quartets of stretchable cells, a plurality of second cells wherein each second cell is defined by two peripheral connector elements and four curvilinear members, one curvilinear member from each stretchable cell forming one quartet of the plurality of quartets of stretchable cells, the second cell having a second size when the stent is in the contracted condition, the second size being larger than the first size,” as recited in independent claim 55.

Applicants submit that White does not teach or suggest “a plurality of second cells, each second cell being defined by four longitudinal elements, each longitudinal element defining the second cell forming a portion of a different stretchable element, each of the plurality of second cells having a second area when the stent is in the unstretched condition, the second area being greater than the first area,” as recited in independent claim 59.

The addition of Khosravi, which is asserted to teach a sheet stent having a plurality of locking elements, does nothing to address the failure of White to teach or suggest all the elements of the instant claims. For at least this reason, Applicants request withdrawal of the rejection and submit that claims 29, 30, 55, 56, 59, 60, and 62-64 are in condition for allowance.

Conclusion

Based on at least the above, Applicants respectfully submit that this application is in condition for allowance. Favorable consideration and prompt allowance of claims 29, 30, 55, 56, 59, 60, and 62-64 is requested.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: August 12, 2008

By: / Jennifer L. Buss /
Jennifer L. Buss
Registration No.: 57321

6640 Shady Oak Dr., Suite 400
Eden Prairie, MN 55344-7834
Telephone: (952) 563-3000
Facsimile: (952) 563-3001

f:\wpwork\jlb\13525us01_amd_20080506.doc